



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

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NOV 23 1993

November 23, 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: Implementation of Sections 3(n)
and 332 of the Communications Act
Regulatory Treatment of Mobile Services
GN Docket No. 93-252

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' reply comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa M. Zaina".

Lisa M. Zaina
General Counsel

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections 3(n))
and 332 of the Communications Act)
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Regulatory Treatment of Mobile Services)
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GN Docket No. 93-252

REPLY COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES

OPASTCO
21 Dupont Circle, NW
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I. INTRODUCTION

On October 8, 1993, the Federal Communications Commission (FCC or Commission) requested comments and replies on the regulatory treatment of commercial mobile services providers.¹ The impetus behind the Commission's NPRM was the passage of the Omnibus Budget Reconciliation Act, a provision of which provided for a comprehensive reexamination of the regulatory status and jurisdiction over the offerings of commercial mobile services providers.² The Organization for the Protection and Advancement

¹Implementation of Sections 3(n) and 332 of the Communications Act, FCC 93-454, GN Docket No. 93-252, released October 8, 1993 (NPRM).

²Pub. L. No. 103-66, Title VI, Section 6002(b), 107 Stat. 312, 392 (1993).

of Small Telephone Companies has been an active participant in the personal communications services (PCS) proceedings and discussions on both Capitol Hill and at the FCC. OPASTCO's goal was and is to ensure that its members are able to participate in bringing the emerging wireless technologies to the rural areas and the customers that they serve. Consequently, the regulatory treatment of these services and their providers plays an integral part in the availability of PCS and all commercial mobile services, particularly in the high cost rural areas.

OPASTCO is a national trade association of more than 430 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve over two million customers.

II. COMMENTS

OPASTCO takes issue with a suggestion raised by two parties in their comments to the FCC. The FCC requested comment on whether it should impose safeguard requirements on dominant common carriers with commercial mobile services affiliates. Cox Enterprises, Inc. (Cox) suggests that "separate subsidiaries for all LEC CMS activities are essential to minimize opportunities for cross-subsidization and discriminatory behavior." ³ COMCAST CORPORATION (Comcast) states that safeguards are required for those markets where effective competition does not exist and that

³Cox at 6.

a "basic competitive safeguard that must be applied to LEC and LEC-affiliated provision of commercial mobile services is creation of separate subsidiaries."⁴ OPASTCO disagrees with this notion, particularly when the LEC is a small or rural one.

The Commission should not impose undue regulatory burdens on LEC provision of mobile services by requiring the creation of separate subsidiaries or other unnecessary safeguards. Such an imposition could curb the development of these services in areas served by small and rural companies. The FCC has already determined that no separate subsidiary requirements will be necessary for LECs that provide PCS because "by seriously limiting the ability of LECs to take advantage of their potential economies of scope, such requirements would jeopardize, if not eliminate, the public interest benefits we seek through LEC participation in PCS."⁵ Moreover, in discussing payment methods for spectrum auctions, the FCC has suggested that royalty payments may not be an appropriate payment method because the establishment of accounting rules for identifying the share of profits or revenues to be attributed to such licenses would likely prove "extremely intrusive and difficult to implement in practice, especially when a license is used by a firm as part of

⁴Comcast at 14.

⁵Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, Second Report and Order, released October 22, 1993, at paragraph 126. (Second Report and Order)

a highly *integrated* communications service"⁶ As suggested by the Commission's discussion in the NPRM, it intends that PCS, a commercial mobile service, will be part of an integrated communications offering, and not require that LECs create separate subsidiaries to provide these emerging wireless technologies.

The FCC recognizes that allowing LECs to participate in PCS will produce significant benefits, including the development of their wireline architectures.⁷ This development will be to the benefit of all PCS services. However, if the participation of the LECs is qualified, the benefits of their participation may not be realized. Clearly, the FCC appreciates that imposition of burdensome safeguards, such as those suggested by Comcast and Cox, will slow the development of these emerging wireless technologies.

As mentioned *supra*, creating an environment that is hostile to LECs in their provision of commercial mobile services will slow development and availability of these services. This is particularly true in the rural areas served by the small and rural companies. The small and rural companies have been very active in the pursuit of the provision of commercial mobile services, including PCS, and imposing separate subsidiary

⁶ In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket 93-253, Notice of Proposed Rulemaking, 58 FR 53489 (October 15, 1993), (emphasis supplied). (NPRM)

⁷Second Report and Order at paragraph 126.


requirements would be adverse to the public interest and contrary to established Commission policy. The FCC has deemed it appropriate to afford special treatment to small LECs because of their unique circumstances.⁸ OPASTCO believes that a LEC that wants to provide commercial mobile services should not be required to create a separate subsidiary, however in the event that the FCC finds it absolutely necessary to require them, OPASTCO believes that it should exempt the non-Tier I LECs.

III. CONCLUSION

OPASTCO urges the FCC not to require separate subsidiaries for LECs that provide commercial mobile services.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES**

By: 
Lisa M. Zaina
General Counsel

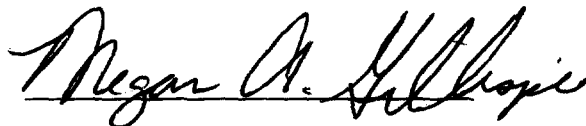
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November 23, 1993

⁸In the Matter of Regulation of Small Telephone Companies,
64 RR 2d 309 (1987).

CERTIFICATE OF SERVICE

I, Megan A. Gillispie, hereby certify that a copy of OPASTCO's reply comments was sent on this, the 23rd day of November, 1993, by first class United States mail, postage prepaid, to those listed below.

A handwritten signature in cursive script, reading "Megan A. Gillispie".

Megan A. Gillispie

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